

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Crim. No. 05-204(2) (RHK/AJB)

Plaintiff,

v.

MEMORANDUM AND ORDER

JAVIER VEGA,

Defendant.

This matter is presently before the Court on Defendant's application for leave to proceed in forma pauperis, ("IFP"). (Docket No. 43.)

Defendant's IFP application will be DENIED, without prejudice, because it does not pertain to any pleading, petition, appeal or other application for substantive relief. See United States v. Groce, 838 F.Supp. 411, 413 (E.D.Wis. 1993) ("28 U.S.C. § 1915(a) does not authorize a party to proceed in forma pauperis" when the request is "disencumbered from a pending action"); United States v. Anderson, No. 2:94cr163 (E.D.Va. 1997), 1997 WL 138970 at *1 (Defendant's application for leave to proceed in forma pauperis must be denied where it is "unassignable to any pending action"), aff'd 5 Fed.Appx. 190 (4th Cir. 2001) (not selected for publication).

Defendant may be intending to commence a post-conviction proceeding sometime in the future, but no such proceeding has been filed as yet. Furthermore, there is no fee requirement for motions brought under 28 U.S.C. § 2255, or other post-conviction motions, because such motions do not commence a new action or appeal, but are merely filings in the original criminal case. Therefore, Defendant will not need IFP status to avoid payment of a filing fee, even if he does file a post-conviction motion in the future.

Based upon the foregoing, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

Defendant's "Application To Proceed Without Prepayment Of Fees And Affidavit," (Docket No. 43), is **DENIED WITHOUT PREJUDICE**.

Dated: September 12, 2006

s/Richard H. Kyle
RICHARD H. KYLE
United States District Court Judge